

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

T.G. LEE DAIRY INC.

Employer

and

Case 12-RC-8938

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL UNION NO. 385, AFL-CIO**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, T. G. Lee Dairy, Inc., operates a milk processing facility located in Orlando, Florida. The Employer processes, packages and delivers from this facility a variety of milk products for consumption by school children and other customers. The employees at the Employer's Orlando facility include production, maintenance, clerical and laboratory employees.

On June 13, 2003, the Petitioner, International Brotherhood of Teamsters, Local Union No. 385, AFL-CIO, filed a petition with the National Labor Relations Board, under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of full-time and regular part-time production and related employees at the Orlando facility. On June 24, 2003, a hearing officer of the Board held a hearing and the Employer filed a brief with me.

The issue before me is whether the full-time and regular part-time production employees the Petitioner seeks to represent share a community of interest distinct from certain clerical, cooler (palletizer and loader), maintenance

and laboratory employees, and thus comprise an appropriate unit for purposes of collective bargaining. The unit sought by the Petitioner consists of 85 employees. The Employer contends that the only appropriate unit also includes all maintenance employees (14), laboratory technicians (7), and cooler (palletizer (15) and loader (29)) employees, an operator 1 plant scheduler and a plant clerk, increasing the unit to about 152 employees.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the unit sought by the Petitioner is not an appropriate unit, but that the maintenance employees need not be included in the unit with the employees the Petitioner seeks to represent. Accordingly, I have directed an election in a unit consisting of all full-time and regular part-time production employees, laboratory employees, the operator I plant scheduler, the plant clerk, palletizers, and loaders, but excluding maintenance employees. There are approximately 138 employees in the unit found appropriate herein.

In the discussion below, I will first present an overview of the facts relevant to the extent of community of interest between the petitioned-for unit and the employees the Employer seeks to include in the unit. Then, I will analyze the facts and set forth the reasons supporting my conclusions as to each of the disputed job classifications.

OVERVIEW

The Orlando Facility

The Employer's milk processing, packaging and delivery functions are all located within a main one-story building. The cooler area and laboratory are in close proximity to the production area where employees can walk from one department to the other. There is also a conveyor belt that runs from the production area to the cooler area where the finished product is accumulated.

Supervisory Structure

William Giovanetti is general manager and vice-president of the company. He oversees all plant operations in the Orlando facility. Steve Herdt is the Orlando facility plant manager and he reports to Giovanetti. Herdt's staff includes two superintendents, Doug Burkel and Dennis Hunter, in charge of the manufacturing area; Ron Cosner, superintendent, overseeing the cooler area; Don Caporale, quality manager in charge of the laboratory; Nick Arnold, plant engineer, overseeing maintenance; and Dan Backhaus, materials manager, who oversees inventory and plant accounting.

Duties of Employees and Degree of Functional Integration

The Employer employs employees in a number of different job classifications at its Orlando Facility. The raw receivers receive and unload the milk, take the milk's temperature, and send a sample by air chute to the laboratory employees, who determine whether the milk meets industry health standards. Raw receivers also clean the raw silos once they are emptied. The operator / plant scheduler determines how much milk production is needed for

the day. Subsequently, the HTST/short time operators start pasteurizing and homogenizing the milk. During the pasteurizing and homogenizing process, the HTST/short time operators take samples of the milk every hour on the hour to the laboratory for quality tests, which are performed by the laboratory technicians.

The blowmold operators run the machines that make the milk “bottles” (plastic jugs). The filler operators bottle the milk from the pasteurized tanks in gallons, half gallons, five-gallon bulk (federal and bulk fillers), institution (paper fillers), and in quarts, pints and eight-ounce (small bottle filler) containers. Before the filler operators start to fill the milk bottles they take an initial sample of the milk to the laboratory for testing by the laboratory technicians and then, once they start filling the containers, they take the first four containers of milk to the laboratory for further testing. The purpose of this testing is to assure the product meets quality standards. The laboratory technicians continue to take samples of the milk hourly during the bottling process, and record every sample that they test.

After the milk is bottled, it is put into cases and stacked by a palletizer machine. The case dock workers make sure the plant is equipped with the cases. When the tractor trailers return to the plant after the milk is delivered to customers, the case dock workers unload the empty cases from the trailers and clean them so they can be filled once again with finished product. The case dock workers are also responsible for cleaning the trailers before the cooler employees can load the empty trailers with product for delivery.

The palletizers are in turn responsible for taking the finished product from the palletizer machine with stand-up forklifts. They either stock the product in a pre-determined area in the cooler, load it directly on a trailer, or stage it on the dock to be loaded onto trailers. Loaders also load the milk from the cooler area onto the tractor trailers for delivery. Loaders and palletizers are considered cooler department employees in reference to the area in the plant where they work. After the loaders or palletizers finish loading a trailer they go to the main office and confirm their loading strips which the plant clerk later confirms as well. The plant clerk confirms the loading strips and paperwork from the plant and raw receiving to identify discrepancies between the raw milk received, the milk produced and the milk loaded for delivery.

The 13 maintenance mechanics install, maintain and repair machines throughout the plant. The “project management” employee, in addition to repairing machines, schedules the work for the maintenance mechanics.

The “clean in place” (CIP) and buttermilk employees clean the lines of the machinery so that once a given milk product has been processed, the machinery can be flushed out and a different type of milk can be run.¹

Degree of Interchange and Contact

The Employer posts job openings when a position becomes available and production employees are allowed to bid on the posting. The majority of the employees at the plant start as case dock workers, with the progression thereafter being to the filler operator position, and subsequently, to HTST/short

¹ The Employer also employs transport drivers at this facility, and I take official notice of the fact that the Petitioner herein was certified to represent them in December 2002.

time operator. Most of the small bottle operators started with the Employer as cooler employees and were transferred to the manufacturing department when the Employer began its small bottle operations in around 1997.

Except for the maintenance mechanics and laboratory technicians, who perform their duties throughout the plant production area, employees work primarily in their particular departments within the plant. Filler operators normally go to the cooler area after they finish with a run to separate products labeled differently to make sure the milk from one customer does not gets mixed up with that of another customer.

Production employees may assist maintenance employees in repairing the plant's machinery. On some occasions, when a machine needs minor repair, like clearing a jammed machine, machine operators undertake the repairing of the machines themselves, but the maintenance mechanics perform the highly skilled tasks which the production operators cannot perform.

Maintenance mechanics are called upon from time to time to run the machines when, for example, an operator has to "use the facilities" and there is no other operator available to run the machine, but this is not a very common practice. In addition, for example, if the Employer is behind in terms of loading finished product for delivery, case dock workers would be sent to help finish loading the product into the trailers.

There is an employee included in the petitioned-for unit, a janitor/relief employee, who is cross-trained as a laboratory technician and works in the lab on an as needed basis.

Wages, Benefits and Working Conditions

All employees receive the same health and retirement benefits, vacation, sick leave, and stock option benefits, and are paid on an hourly basis.

Additionally, all are covered by the same employee handbook. They share the same break rooms. All employees work set shifts, except that maintenance mechanics are also on call.²

Most of the employees in issue apart from the maintenance mechanics are paid under the same pay scale.³ Production, cooler and laboratory employees are all covered under the plant operations pay scale which is divided into six categories, category I being the highest pay. Wages in these categories range from \$9.91, the starting wage for a category VI employee, e.g., box filler, to \$15.84, the highest wage in category I, e.g. blowmold operator, laboratory technician, after 36 months. Employees under the plant operations pay scale system can progress within each category for a higher wage after 6, 12, 24, and 36 months. Maintenance mechanics are covered under the maintenance pay scale divided into M-I, M-2, and M-3 categories, which range from \$18.47 for an M-3 mechanic to \$20.59 for an M-I mechanic. In order for maintenance mechanics to progress within the different pay scale levels they are required to take and pass a company examination that tests the employee's knowledge of the plant's machinery.

² Shift times vary. Certain positions, such as maintenance mechanics, are scheduled around the clock. Palletizers work four 12-hour days each week, while other employees work 8 or 10 hour shifts. Separate work schedules are posted for various functions within the plant.

³ The record does not reflect the pay rates of the operator 1 plant scheduler or the plant clerk. The wage rates of the warehouse drivers are also not clear from the record.

Most employees wear the same uniforms, consisting of blue pants and white shirts. Cooler employees wear a jacket or a jump suit due to the low temperatures in the cooler area. Maintenance mechanics wear blue pants with blue shirts, and laboratory technicians wear white pants and white shirts. The plant clerk does not wear a uniform, and the operator 1 plant scheduler wears a white shirt with either blue, black or tan pants.

All employees share the same time clock, except cooler employees who have their separate time clock in the cooler area.

Although referred to as departmental seniority, it appears from the record that the Employer maintains classification seniority, which is used when bidding on vacation times.

Skills and Training

There is no formal education required for the hiring of any of the employees in the plant, except that a high school diploma is usually expected. Some employees may also hold college degrees.

Laboratory technicians are state certified. However, as noted above, there is one employee, a janitor/relief employee, who works as a laboratory technician on an as needed basis who is not yet state certified.

Most positions at the Employer's facility appear to require at least some training. For example, blowmold operators⁴, filler operators and HTST/short time operators⁵, are provided with company training to run their respective machines. Cooler employees are trained in operating forklifts. The operator 1 plant

⁴ Blowmold operators are sent to Baton Rouge, Louisiana, for blowmold classes.

⁵ HTST/short time operators are sent to Texas for a 4-day training to run the machines.

scheduler and plant clerk have had computer training. Maintenance mechanics, who are sent to “a lot of different trainings,” and machine operators sometimes travel together to train on the different machines in the plant. The project management employee in the maintenance department has also received special computer training.

The Employer tries to hire experienced maintenance mechanics, e.g. plumbers, electricians, etc., depending on the Employer’s need at the time of hiring.

ANALYSIS

In determining whether employees in a petitioned-for unit share a community of interest separate and apart from those outside the unit, the Board looks to criteria such as common supervision, similarity in the employees’ skills and functions, interchange and contact among employees, the degree of functional integration in the Employer’s production process, similarity of working conditions, and similarity of wages and fringe benefits. See Kalamazoo Paper Box Corporation, 136 N.L.R.B.134, 137 (1962); Yuengling Brewing Co. of Tampa, 333 N.L.R.B. 892 (2001). The Board only requires that the petitioned-for unit be an appropriate unit, not the most appropriate unit. Overnite Transportation, Co., 322 N.L.R.B. 723 (1996)

The Cooler Employees

The role of the cooler employees in the Employer’s production process is to keep the milk cold and load it onto trailers for delivery. The cooler employees’ community of interest with production employees is evidenced by a variety of

factors. They share the same break room, pay scale, education requirement or lack thereof, and fringe benefits, and are subject to the same work rules. Cooler employees have also transferred into production jobs as small bottle operators. In addition, case dock workers, who are in the petitioned-for unit, perform similar functions to the cooler employees. Case dock workers unload trailers upon arrival from their deliveries, and cooler employees load the same trailers for delivery.

It is apparent that there is a high degree of functional integration throughout the Employer's production process, including the work performed by the cooler employees. Under all the circumstances, I find the functional integration of the work of the cooler employees with the other phases of the Employer's production operation and the common wages, working conditions and benefits shared with the other production employees to require the inclusion of cooler employees in the same unit as the petitioned-for employees.

Clerical Employees

The operator 1 plant scheduler and the plant clerk both work in an enclosed office area adjacent to the production area. The operator 1 plant scheduler usually begins his workday at 2:00 a.m. and the plant clerk begins work at 9:00 p.m. The operator 1 plant scheduler's primary job responsibility is to schedule daily milk production at the plant and to schedule outgoing deliveries. This function includes preparing the necessary paperwork for the HTST/short time, blowmold, filler and cooler employees indicating how much milk production is expected for the day. He also orders products that are not manufactured at

the plant, such as juice or butter, for re-sale. The plant clerk's primary responsibility is to maintain an inventory of the milk received, produced, and delivered for the day. She also maintains records of damaged products that cannot be sold. The operator I plant scheduler and the plant clerk spend most of their time in their offices in an enclosed area within the production area. The operator I plant scheduler occasionally ventures to the production area if he needs to talk to a supervisor, but the plant clerk primarily stays in her office area.

A key element in determining whether employees are plant clericals, as defined by the Board, and therefore, whether they should be included in a production unit is whether they "perform functions closely allied to the production process or to the daily operations of the production facilities at which they work." Fisher Controls Co., 192 NLRB 514 (1971); Gordonsville Industries, 252 N.L.R.B. 563, 590 (1980). In Hamilton Halter Co., 270 N.L.R.B. 331 (1984), the Board reversed the hearing officer's decision to sustain challenges to the ballots cast by two clerical employees, and held that the two clerical employees appropriately belonged in the petitioned-for bargaining unit with production and maintenance employees.⁶ The Board held in that case that the disputed employees' duties, processing customer orders, typing invoice slips, maintaining inventories and ordering supplies, were functions closely associated with the employer's production process and typical of plant workers.⁷

Similarly in the present case, the fact that the operator I plant scheduler

⁶ The petitioner took the position that the disputed employees were not eligible voters as they were office clerical employees. The employer took the position that the employees were plant clerical employees, properly included in the production and maintenance unit and therefore eligible to vote

⁷ See also, Columbia Textile Services, 293 N.L.R.B. 1034, 1037 (1989).

and the plant clerk perform duties typical of plant workers militates in favor of these employees' inclusion in the petitioned-for unit as plant clerical employees. The plant clerk spends her working time processing inventory paperwork, which includes verifying everything done by the production employees who are in the petitioned-for unit. The operator I plant scheduler provides petitioned-for production employees with direction as to how much milk production is needed for the day. In addition, there is no evidence in the record that either of these employees perform functions or duties related to the general office operations. Moreover, these employees receive the same fringe benefits as other production employees and their duties demonstrate a high degree of functional integration with the production process. From the above facts, I find that they are plant clerical employees and shall include them in the unit.

Laboratory Technicians

The laboratory technicians are closely involved in the milk production process throughout its different phases. Before raw milk is unloaded, laboratory technicians check it for bacteria and the like. During the pasteurizing and homogenizing process, the HTST/short time operators take samples of the milk to the laboratory for testing. During the milk bottling phase, laboratory technicians go out to the production area and take samples of the milk themselves. Their primary responsibility is to ensure the milk's quality and compliance with industry standards. They also perform swab tests for bacteria in the cooler. Although some of these employees have a college education, laboratory technicians are not required to have a college degree. Although the

full-time lab technicians are state certified, there is no explanation in the record of precisely what this entails and other employees in the unit found appropriate, such as those who operate forklifts, have certifications as well. Laboratory technicians share similar terms and conditions of employment with production employees and share the same fringe benefits. Moreover, the record reflects that the laboratory technicians' wages are similar to the wages of HTST/ short time and blowmold operators. In addition, laboratory technicians have regular contact with production employees.

In The Kroger Co., 173 N.L.R.B. 397 (1968), the intervenor union sought the inclusion in the unit of five laboratory employees involved in the employer's dairy production process, while the petitioner union and the employer sought to exclude them from the unit. The Board concluded that the laboratory employees had a sufficient community of interest with production employees to warrant their inclusion in the appropriate bargaining unit. The Board based its decision, among other factors, on the fact that the routine testing work of the laboratory employees required their presence almost constantly in the dairy production area, both production and laboratory employees were hourly paid, and the laboratory employees' function was generally supportive of the employer's manufacturing operation.

In Keller Crescent Co., 326 N.L.R.B. 1158 (1998), the union petitioner sought to include three quality assurance monitors in the production and maintenance petitioned-for unit, but the employer contended they lacked a community of interest with the production and maintenance employees. The

regional director found the petitioned-for unit appropriate and the Board denied the employer's request for review. Similar to the laboratory technicians in this case, in Keller Crescent Co., the quality assurance monitors in dispute were primarily responsible for testing the product to ensure that the finished product met pre-established quality standards. The quality assurance monitors took product samples off the machines and evaluated the quality of the product; there were no specific educational requirements for the position, and they had contact with the production employees on a daily basis. The quality assurance monitors, like the production employees, were hourly paid and received the same benefits including health benefits, vacations, and profit sharing, and shared the same breakroom. Despite the fact that the quality assurance monitors reported to a different supervisor and were in a separate department than the production employees, the regional director, relying on Hogan Mfg.⁸, concluded that the testing and sampling work of the quality assurance monitors was functionally integrated with the employer's production operations and a vital part of the production process, and thus they were appropriately included in the unit.

Based on the above I find that the laboratory technicians share a community of interest with the production employees which requires their inclusion in the unit.⁹

⁸ 305 N.L.R.B. 806, 807 (1991) (quality control employees included within production and maintenance unit because "quality control is a vital part of the production process"). *See also Bennett Industries, Inc.*, 313 N.L.R.B. 1363 (1994) (quality control employees included in production and maintenance unit by Regional Director because they "perform a function which is an extension of and integrated with the manufacturing process and work in close proximity to undisputed unit employees").

⁹ The record is not sufficiently detailed to allow me to determine if the lab technicians are technical employees. However, even if they are, I would find it appropriate to include them in the unit based on their strong community of interest with the production employees.

The Maintenance Mechanics and Project Management Employee

It is Board policy, as set forth in American Cyanamid Company, 131 N.L.R.B. 909 (1961), to find separate maintenance department units appropriate in the absence of a more comprehensive bargaining history, where the facts of the case demonstrate that the maintenance employees involved have the requisite community of interest.

The maintenance employees in this case are supervised separately from the rest of the employees¹⁰ and are organized into a different department. They wear tool belts and use specialized equipment. Their compensation differs from that of the production and laboratory employees. They have distinct skills as reflected in the higher pay scale for the maintenance employees. In addition, for maintenance mechanic positions, the Employer seeks experienced candidates, hiring, for instance, a plumber when plumbing skills are needed, or an electrician when electrical skills are needed. In contrast, the Employer's production workers are not required to have prior work experience. See Yuengling Brewing Co. of Tampa, supra.

The maintenance duties performed by production employees are minor and require lesser skills; the maintenance employees perform all major repairs. The Board has held that sporadic instances of employees assisting with another department's tasks reflect a "spirit of cooperation or civility" rather than overlap of job functions. Ore-Ida Foods, 313 N.L.R.B. 1016 (1994); Capri Sun, Inc., 330

¹⁰ In addition to the plant engineer, the Employer maintains a maintenance supervisor position, although the latter was vacant at the time of the hearing.

N.L.R.B. 1124, 1126 (2000); United Operations, 338 N.L.R.B. No. 18 (2002).

There is no evidence that employees in other classifications have transferred to maintenance positions or vice versa, or that employees in other classifications substitute for maintenance employees on a temporary basis.

While the Employer contends that the collective bargaining history at other Dean Foods' plants¹¹ where maintenance personnel are included in the bargaining units supports the inclusion of maintenance employees here, bargaining history at other plants is not dispositive of the issue before me.

Under these circumstances, and in accordance with the cases cited above, the maintenance employees are appropriately excluded from the unit sought. Accordingly, I shall exclude the maintenance employees from the unit.

Conclusions and Findings

A. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.¹²

B. The Petitioner claims to represent certain employees of the Employer.

C. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1), and Section 2(6) and 2(7) of the Act.

D. The following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

¹¹ The Employer is a subsidiary of Dean Foods.

¹² The Employer is a Florida corporation. As noted above, it is engaged in the production, transportation, and non-retail and retail sale of dairy products. During the past 12 months, in conducting its business operations described above, the Employer purchased and received at its Orlando, Florida facility goods and materials valued in excess of \$50,000 directly from points located outside the State of Florida.

All full-time and regular part-time plant production employees, including small bottle, blowmold, case dock, paper filler, utility, federal fillers, raw receiving, buttermilk, short-time, bulk filler, vacation relief employees, warehouse drivers, breakmen, clean in-place (CIP) operators, relief workers, cooler department employees (palletizers and loaders), operator I plant scheduler, plant clerk, and laboratory technicians employed by the Employer at its facility in Orlando, Florida; excluding maintenance employees, transport drivers, temporary employees, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Brotherhood of Teamsters, Local Union No. 385, AFL-CIO. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who are employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that began less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers, but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in

the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 N.L.R.B. 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all eligible voters. North Macon Health Care Facility, 315 N.L.R.B. 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 201 East Kennedy Blvd., Suite 530, Tampa, FL 33602, on or before August 4, 2003.

No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. Since the list will be made available to all parties to the election, please furnish a total of **two** copies. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three full working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the Election Notice. Club Demonstration Services, 317 N.L.R.B. 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W. Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on August 11, 2003. The request may not be filed by facsimile.

Dated at Tampa, Florida, this 28th day of July 2003.

Rochelle Kentov, Regional Director
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